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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-197660

DATE: June 6, 1980

MATTER OF: William D. Fish and Harold C. Guy
Backpay for Failure to Assign Overtime Duty

DIGEST: Collective bargaining agreement provides that overtime work will normally be performed by employees who regularly perform those duties. Agency official issued a grievance decision finding that, although the task in dispute was a rush job, the work should have been assigned to the two grievants and, therefore, the failure to do so violated the agreement. Since the deciding official's interpretation of the agreement is a reasonable one, we find the grievants are entitled to overtime pay under Back Pay Act.

May backpay for overtime work be paid to two Air Force employees who did not actually perform the work, but would have performed it had it not been for a violation of the negotiated agreement between the agency and the union?

Under the circumstances presented when the failure to properly assign overtime amounted to a breach of a nondiscretionary provision, we hold that the grievants may be paid under the Back Pay Act, 5 U.S.C. § 5596.

The Accounting and Finance Officer, Mather Air Force Base, California, has requested an advance decision concerning the propriety of settling a grievance for overtime compensation filed under the 1976 negotiated agreement between the 323d Flying Training Wing (ATC) and Local 1692, American Federation of Government Employees (AFGE). Copies of the request and supporting documents were served on AFGE Local 1692 in accordance with 4 C.F.R. Part 21.

On March 4 and 5, 1979, two carpenters installed ceramic mosaic tile at the Officers Club. Two masons, William D. Fish and Harold C. Guy, filed a grievance alleging that under the terms of the contract, the work should have been assigned to them and they are therefore entitled to overtime compensation. They relied on Article 13, Section 3 of the negotiated agreement which provides, in pertinent part, that:

"Overtime work will normally be performed by employees who perform these duties as a part of their regular job."

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On July 24, 1979, the Vice Wing Commander issued his decision on the grievance and found that the performance of the task by carpenters was in violation of Article 13, Section 3, and that the work should have been assigned to the two masons, Messrs. Fish and Guy.

The case was submitted to this Office because the Air Force finance officer questions whether overtime compensation may be paid under these circumstances. Specifically, he notes that the use of the word "normally" in the contract provision quoted above suggests that the provision is not mandatory, and does not establish a nondiscretionary agency policy, as required by our decisions relating to backpay for overtime.

It is well established that a violation of a mandatory provision of a labor-management agreement which causes an employee to lose pay may constitute an unjustified or unwarranted personnel action compensable under the Back Pay Act, 5 U.S.C. 5596. Where an agency assigns work in violation of a mandatory provision of a collective bargaining agreement and thereby deprives an employee of overtime work, the employee may receive backpay for the overtime work he otherwise would have performed. 54 Comp. Gen. 1071 (1975). Payment may be made pursuant to the award of an arbitrator, or an agency head on his own initiative may conclude that the agreement has been violated and institute the same remedy. 54 *id.* 888 (1975). In this case, the only issue is whether the contract provision, which uses the word "normally", is a mandatory one which establishes a nondiscretionary agency policy.

The agency official who decided the grievance made the following findings with respect to the use of the word "normally".

"Since this task was a duty that is part of the regular job of a mason, ... it should have been performed by masons if normal circumstances existed. Although this was a rush job, that in itself is not an abnormal circumstance. In this case, masons could have been called in to commence laying the tile when the project was ready for that phase without jeopardizing the timely completion of the project. I therefore determine that the performance of this task by carpenters was in violation of the above provision of Article 13."

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In considering the interpretation given a collective bargaining agreement by an arbitrator or agency official authorized to decide grievances, we give great weight to their interpretation. If it represents a reasonable interpretation, we will accept it even if other interpretations could be made. Roy F. Ross and Everett A. Squire, 57 Comp. Gen. 536, 542 (1978). In this case, the deciding official's interpretation of the word "normally" is a reasonable one. He determined that, although it was a rush job, that in itself was not an abnormal circumstance and the masons could have been assigned the work without delaying completion of the task.

In effect, the deciding official found that the negotiated agreement provision was nondiscretionary under the circumstances of this case. It required the agency to use masons to perform the overtime work in question under normal circumstances. The agency would have had discretion to use other workers only if abnormal circumstances had existed. Since he found the circumstances were not abnormal, the agency had a mandatory duty to use the two grievants to perform the work and its violation of that duty entitles them to backpay under 5 U.S.C. § 5596.



For the Comptroller General
of the United States